Citation: *R.* v. *Brisson*, 2013 YKTC 15

Date: 20130122
Docket: 11-00777A
12-00414
12-00790
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Luther

REGINA

v.

CHRISTOPHER ROCK JOSEPH BRISSON

Appearances:
Jennifer Grandy — Counsel for the Crown
Kim Hawkins — Counsel for the Defence

REASONS FOR SENTENCING

[1] LUTHER T.C.J. (Oral): Christopher Rock Joseph Brisson has pleaded guilty to two charges from February 1, 2012, namely:

Count 1: On the 1st day of February, 2012, at Whitehorse, Yukon Territory he did unlawfully possess a substance included in Schedule 1, to wit: cocaine for the purpose of trafficking contrary to Section 5(2) of the *Controlled Drugs and Substances Act*.

And:

Count 2: On the 1st day of February, 2012, at Whitehorse, Yukon Territory he did have in his possession a restricted weapon, to wit: a Smith and Wesson Model SW40F handgun; without being the holder of a license under which he may possess; contrary to Section 91(2) of the *Criminal Code*.

Also two counts from the 9th day of July, 2012.

> Count 1: On or about the 09th of July, 2012, at or near Whitehorse, Yukon Territory, did unlawfully possess a substance included in Schedule 1, to wit: cocaine for the purpose of trafficking, contrary to Section 5(2) of the *Controlled Drugs and Substances Act*.
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> Count 2: On or about the 09th day of July, 2012, at or near Whitehorse, Yukon Territory, did being at large on his recognizance entered into before a Justice of the Peace and being bound to comply with a condition of that recognizance directed by the said Justice of the Peace fail without lawful excuse to comply with that condition, to wit: abstain absolutely from the possession or consumption of controlled drugs or substances except in accordance with the prescription given to you by a qualified medical practitioner, contrary to section 145(3) of the *Criminal Code*.

[2] Earlier this morning, we conducted a sentencing hearing. Characterized as a mid-level drug trafficker, this offender came to the attention of the RCMP two to three months before his initial arrest on February 1, 2012. At that time, the offender had 20 baggies of cocaine with one-half gram in each, and another bag with about 3.5 grams. There was $540 in cash as well as a knife and a small amount of marihuana. From the ringing cellphones, the police heard coded orders for drugs. A subsequent search of his residence uncovered 170 grams of cocaine, $1,135 in cash, debt lists, and 10 grams of marihuana. The value of the cocaine was between $16,000 to $22,000 depending on whether sold by gram or ounce. A very disturbing find was the Smith and Wesson handgun and ammunition for which the offender did not have a licence.

[3] Released on a substantial recognizance, the offender came to the attention of the police again. In May, a Mr. Manning, an associate of the offender, sold cocaine to an undercover operator. On July 9, 2012, Mr. Manning was selling again, and to get the further four ounces of cocaine would have to call “his guy”. The offender drove

Mr. Manning to Mr. Brisson's residence. The police arrested both the accused and Mr. Manning there. This time, 11 grams of cocaine were found in the vehicle and 80 grams in the home in one-half ounce and one gram quantities. In addition, there were debt lists and $6,200 in cash, a bulletproof vest, a knife, hammer, and bat. The total value of the drugs from the car and the house would have been approximately $10,500 depending on how it was sold.

[4] Christopher Brisson, now 23, came to the Yukon at the age of 12 with his father after a divorce. Both parents wrote letters of support. The mother in Alberta was unable to be here. The father, Rock Brisson, has raised his son for the last 11 years, visited him in jail frequently, and, in a loving and caring manner, addressed the Court. The father, Mr. Brisson, is far from experiencing good physical health, having suffered three heart attacks and a stroke, but his insights into his own past and the observations of his son were very helpful.

[5] The offender has a significant learning disability which prevented meaningful capacity to read and write. He has had odd jobs and has worked in his father's painting and renovation enterprise. While not an addict to cocaine, it appears that his usage increased when he learned, a few months after the February arrest, that his girlfriend and young son were moving away. The offender, with the help of a dedicated Yukon Learn tutor, has made some progress in his goal of learning to read and write at a functional level.

[6] The purpose of sentencing is set out clearly in the *Criminal Code* and if we take a look at s. 718:

> The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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> (*a*) to denounce unlawful conduct;
> (*b*) to deter the offender and other persons from committing offences;
> (*c*) to separate offenders from society, where necessary;
> (*d*) to assist in rehabilitating offenders;
> (*e*) to provide reparations for harm done to victims or the community; and
> (*f*) to promote a sense of responsibility in offenders, and an acknowledgement of the harm done to victims and to the community.

These purposes of sentencing have been examined hundreds if not thousands of times by judges here in this Territory.

[6] A drug case that I had back in 2007 involving a Jacob Kwong Sang Lee (*R*. v. *Lee*, 2007 YKTC 70) gave me the opportunity to examine that particular section of the *Criminal Code*, 718, and in that particular case I held that tremendous priority was being given to paras. (a), (b), and (c), and it is quite the same situation in this particular case. The emphasis has to be on (a), (b), and (c), and I think in the case of this offender, it is important that he understand what he has done to the community as well. I will be addressing that later in the reasons. So para. (f) would kick in here too.

[7] The Crown has filed with the Court a comprehensive booklet of authorities, and I will not go through each and every one of the cases, but I will highlight the contents from some of them. In the case of *R.* v. *Crompton*, 2009 YKSC 16, a 2009 decision of

Mr. Justice Veale, a sentence of 18 months was imposed. In that particular case, at para. 11:

> There is no doubt that drug offences of this nature must be denounced and deterred. Drug trafficking is an insidious business that ruins lives and destroys communities. In Mr. Crompton's case, it is especially aggravating that he appears to have learned nothing from his first mistake and has continued with his business as usual while he has been released pending trial and sentencing.

[8] In *R.* v. *Naiker*, 2007 YKTC 58, a decision of Chief Judge Faulkner, it was stated at para. 7:

> Given the nature of the drug trafficked, given the vulnerability of our community, and given the purely commercial nature of Mr. Naiker's activities, denunciation and deterrence must be the primary focus of sentencing. People who get it into their heads to come into our community to sell drugs must know they will not be welcomed when they end up before the courts.

[9] In the case of *R*. v. *Nipp*, 2011 YKTC 6, a decision of Judge Lilles, in paras. 10 and 11 Judge Lilles made reference to previous cases, *R.* v. *Profeit*, [2009] Y.J. No. 78 (T.C.), a decision from Judge Cozens, and also *R.* v. *Holway*, 2003 YKTC 75, a decision of Judge Faulkner. In the *Profeit*, *supra*, case, Judge Cozens stated at para. 39:

> Trafficking in drugs, and in particular drugs such as cocaine, is a crime whose victims can be found far beyond the individuals who become addicted to the drugs. Families can be torn apart by either the loss of the individual to the addiction itself or to the violence that all too often accompanies the drug trade. In Canadian society, this violence has found innocent victims on numerous occasions, whether they be extended family members or passers-by caught in the crossfire of the violence.

[10] Drug offences are clearly not victimless crimes and the Crown attorney in this case has made the point that there are many cases of property crimes, including home invasions, because people are prepared to do almost anything to satisfy their drug habits. In the case of *R*. v. *Bourne, Auclair and Devellano*, 2007 YKTC 81, a decision of Chief Judge Faulkner, Mr. Bourne was sentenced to 18 months for a drug offence and 15 months consecutive for a prohibited weapons charge. I would note that the weapons in the case of Mr. Bourne, as described in para. 4 of that decision, involved prohibited weapons as opposed to the case here involving restricted weapons. The weapons there were an AK-47 assault weapon and an MAK-10 machine pistol.

[11] In the case of *R*. v. *Lee*, I referenced at para. 9 an old case from Judge Stuart, *R.* v. *Curtis*, [1982] Y.J. No. 4 (T.C.), a case which is now over 30 years old, but a case which has not lost its significance nor its importance.

[12] In this case, the Crown is seeking a sentence in the range of three-and-a-half to four years. The Crown's request is quite reasonable and the defence has basically acknowledged that as well. This is not a joint submission but it is one where I think the defence, having looked at the jurisprudence in this Territory, has acknowledged that the Crown's request is a reasonable one. That being so, the actual sentence will take the following form:

[13] For the charge from February 1, 2012, under s. 5(2) of the *Controlled Drugs and Substances Act*, the Court will impose a sentence of 15 months. With regard to the charge under s. 91(2) of the *Criminal Code* there will be a sentence of one year consecutive. So for the charges from the 1st of February, the total sentence is a period

of 27 months. Overall the Court is going to fix the sentence at 45 months. Thus the sentence on the drug charge from the 9th of July is going to be fixed at 18 months, and on the charge of s. 145(3) from the 9th of July, the sentence will be fixed at a period of six months concurrent. So to repeat, the drug charge from February 1, 2012 will be fixed at 15 months; the restricted weapon charge will be 12 months consecutive; the drug charge from July 9th will be a period of 18 months consecutive, and the breach of recognizance will be six months concurrent.

[14] There will be no victim surcharge. There will be an order under s. 109 of the *Criminal Code* for a period of ten years, from the date that he is released from the penitentiary. There will be, under s. 16 of the *Drugs Act*, a forfeiture order for everything that was seized; that will include the bulletproof vest.

[15] Given the nature of drug charges, generally, and specifically in this case where there is also a conviction and a sentence for a restricted weapon, and taking into account the circumstances of the second arrest and the other items that were seized, including the bat, the knife and the hammer, I have no hesitation whatsoever in making an order for the forfeiture of the bulletproof vest. While it might be seen by some as an item of clothing, if we look at it in the full context of these drug charges and the activities that the young Mr. Brisson was engaged in, it is only proper to conclude that the bulletproof vest was a part of that operation.

[16] There will be a credit for 200 days of custody that he has been in since his second arrest, and that will be of course on a one-to-one basis. There will also be a DNA order. Were there any other orders that the Crown was seeking?

[17] MS. GRANDY: No. I did draft copies of the forfeiture order.

[18] THE COURT: Okay.

[19] MS. GRANDY: So I can pass those forward. And I could also ask that the remaining counts on all files with respect to Mr. Brisson be marked as withdrawn.

[20] THE COURT: Okay.

[21] Now, Mr. Christopher Brisson, would you stand, please? It is unfortunate that you find yourself at the age of 23 years old going to a federal penitentiary. It is not something that we, as judges, like to do; however, when we realize the scourge that drugs have placed on our society we have to realize that it is the only thing to do. We cannot have people engaged in these activities with hard drugs and expect to have light sentences, and I think you understand that.

[22] Your father pointed out quite clearly how he was able to turn his life around when a judge warned him not to get in trouble again, and he must have been involved in a lot less trouble than you are today, where the judge in that case gave him a break and said look, if you ever come back again you will really get hit hard with a sentence.

[23] In your case that is not my warning today. Rather than give you a warning about coming back and being involved in drugs and looking at a 10 or 15 year sentence; that is not important here. What is important is that you recognize that you do have the ability, now that you have reached rock bottom - and your father talked about that concept of reaching rock bottom - to pull yourself up. There are a lot of good programs

available in the federal institutions, and you have already made some decent progress in learning how to read and write, and now that you are going to be in the federal institution for a significant period of time, you should be able to get to a functional level of reading and writing if you really apply yourself. Whatever sympathy we may have for you is far outweighed by the harm that is done to society by drug trafficking, and as a court we want to make it abundantly clear that people involved in this drug trade, especially the hard drugs, are going to be paying the consequences.

[24] So the opportunity is there for you now to turn it around. I trust that you will, by phone and otherwise electronically, be able to stay in touch with your father and the rest of your family, and you will be able to show them the progress you are making while you are inside the institution and when you get out. Like I said before, you have the opportunity to turn it around.

[25] Any questions here for the Crown?

[26] MS. GRANDY: No.

[27] THE COURT: Anything here, Ms. Hawkins?

[28] MS. HAWKINS: No.

[29] THE COURT: That is all then.

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LUTHER T.C.J.